

Office of the Secretary of the Treasury

§ 50.82

§ 50.81 State causes of action preempted.

All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.82 Advance approval of settlements.

(a) *Mandatory submission of settlements for advance approval.* An insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is \$2 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is \$10 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled.

(b) *Discretionary review of other settlements.* Notwithstanding paragraph (a), Treasury may require that an insurer submit for review and advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for

Federal payment under the Program where the settlement amounts are below the applicable monetary thresholds identified in paragraphs (a)(1) and (2) of this section.

(c) *Factors.* In determining whether to approve a proposed settlement, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.83(d)(2);

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement amount does not include any items such as fees and expenses of attorneys, experts, and other professionals that have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.83.

(d) *Settlement without seeking advance approval or despite disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with paragraph (a) or (b) of this section, and in accordance with § 50.83 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.